IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL MISC.NO.24381 M OF 2007

DATE OF DECISION: MAY 15, 2007

Amit Sardana

.....Petitioner

VERSUS

State of Punjab

....Respondent

CRIMINAL MISC.NO.24741 M OF 2007

Kamal Verma

.....Petitioner

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. **Whether Reporters of local papers may be allowed to see the judgement?**
2. **To be referred to the Reporters or not?**
3. **Whether the judgment should be reported in the Digest?**

PRESENT: Mr. Rajiv Atma Atma, Sr.Advocate with
Mr. J. S. Sidhu, Advocate,
for the petitioner.
(In Crl.Misc. No.24381 M of 2007)

Mr. Ashok Aggarwal, Sr.Advocate with
Mr. J. S. Sidhu, Advocate,
for the petitioner. (in Crl.Misc.No.24741 M of 2007)

Mr. M. C. Berry, Sr.DAG, Punjab,

for the State.

******

RANJIT SINGH, J.

This order will dispose of abovesaid two petitions.

The petitioners in these petitions are Amit Sardana and Kamal Verma, employees of M/s Infrastructure Professionals Enterprise (P) Ltd. (for short, "M/s IPE"). On being named in the FIR No.5 dated 23.3.2007, registered under Sections 409, 420, 467, 468, 471, 120-B IPC and Section 7, 13(1)(c)(d) read with Section 13(2), 14 of the Prevention of Corruption Act, 1988 at Police Station Vigilance Bureau, Ludhiana, they have filed the present petitions, seeking grant of regular bail.

While issuing notice in these petitions, it was observed that petitioner, Amit Sardana, had voluntarily gone and appeared in the Vigilance Office and accordingly was arrested on 23.3.2007.

M/s IPE is a Company which was employed as advisor to the Improvement Trust, Ludhiana,(hereinafter referred to as "the Trust") for preparation of documents for entering into an agreement between the Trust and M/s Today Homes for the project undertaken by the Trust. Petitioner Amit Sardana had joined as a General Manager of M/s IPE in 1997 and was designated as Vice President in the year 1998. He was made Director of this Company in the year 2004.

Mr.Rajiv Atma Ram, learned senior counsel appearing on behalf of petitioner, Amit Sardana, points out that the petitioner was

associated with the functioning of M/s IPE for advising the Trust and was associated with the project for the years 2003/2004 till the submissions of draft documents. The allegations against the petitioners, who are employees of M/s IPE, are that they presented the Company and that on 17.5.2005, when the bids were illegally opened, Kamal Verma was present as Consultant. It is further alleged that M/s IPE connived with the Chairman of the Board, P.S.Sibia, in the acceptance of fraudulent bid of M/s Today Homes. Counsel would point out that Amit Sardana was not present at the time of opening of the bid and accordingly nothing can be held against him on that count. In this regard, he would refer to the contents of the FIR where it is clearly mentioned that on 17.5.2005, when the bids were opened, Kamal Verma was present as Consultant. By referring to the order rejecting the prayer of bail filed by the petitioners, the counsel would say that allegation of payment of Rs.5 lacs to the petitioners is by M/s Today Homes and not by the Trust or any employee of the Trust.

Mr.Ashok Aggarwal, senior counsel appearing for petitioner Kamal Verma, has referred to the record to say that in fact M/s IPE had advised the Trust not to sign the agreement to sell the land and the same was advised to be given on lease. He would also submit that the petitioners were arrested on 23.3.2007 and were investigated and are in judicial custody since 31.3.2007. The counsel say that since the investigation qua them is complete, there is no justification for keeping them in further custody.

The prayer of the petitioners is opposed by Mr.Berry, learned Senior Deputy Advocate General, with all the vehemence at

his command. He says that this is a case, which involves a scam of huge financial implications, for which the petitioners had played significant role. He further says that release of the petitioners, at this stage, would not be conducive of fair investigation as matter is still under investigation to unearth the scam and involvement of others for which further investigation of the petitioners may be needed.

I have considered the rival contentions raised before me to see if the petitioners are needed to be kept in custody for any further investigation vis-a-vis their release on bail. The petitioners belong to a Company, which had acted as an advisor to the Trust. Their opinion or advice, whenever given, could not have been binding on the Trust. The payment of money to the petitioners is alleged to have been made by M/s Today Homes, which is a private concern, which was allotted this project. The petitioners, being employees of the consultant Company, have acted as Advisors only and action, if any, obviously was taken by the persons of the Trust. In this background, it is to be seen if any case for keeping the petitioners in judicial custody is made out or not. As noticed by the Hon'ble Supreme Court in ***Babu Singh and others Vs. State of Uttar Pradesh,*** AIR 1978 Supreme Court 527, that the correct legal approach in regard to grant of bail has been clouded in the past by focus on the ferocity of the crime to the neglect of the real purposes of bail or jail and indifferent to many other sensitive and sensible circumstances which deserve judicial notice. As noticed by the Hon'ble Supreme Court, the Courts have often acted intuitively or reacted traditionally, so much so the fate of applicants for bail at the High Court level and in the Supreme Court, has largely hinged on the

hunch of the bench as an expression of `judicial discretion'. The Supreme Court accordingly advocated a scientific treatment in the decision making. The consideration of grant or denial of bail would involve issues like liberty, justice, public safety etc. Personal liberty is deprived when bail is refused and it can not be denied that this is too precious a value as per our constitutional system and recognized under Article 21 of the Constitution of India. As rightly noticed by the Hon'ble Supreme Court that crucial power to negate is a great trust exercisable, not casually but judicially with lively concern for the cost to the individual and the community. The discretion of grant of bail with generally inviting consideration of the courts is if the accused person will appear for trial or not? This requirement is generally tested on the consideration relating to nature of the accusation, nature of evidence in support, severity of the punishment which conviction may entail etc. Nothing has been pleaded before me to say that the petitioners are likely to flee from justice. No apprehension in this regard has been expressed before the Court. The only submission made is that investigation is in progress and the petitioners may be needed for further investigation. The liberty of the petitioners may not be required to be curtailed on the ground of pendency of investigation, specially so when they are in judicial custody and are not likely to be available for any further interrogation. It is to be noticed that the petitioners are not to be punished at this stage, which would follow, if they are found guilty after trial. In ***The State of Rajasthan, Jaipur Vs. Balchand,*** AIR 1977 Supreme Court 2447, the Supreme Court noticed that the basic rule is bail not jail except where there are circumstances suggestive of fleeing from

justice or thwarting the course of justice etc. No such indication is available in this case.

The petitioners are directed to be released on bail subject to the satisfaction of Chief Judicial Magistrate, Ludhiana.

May 15, 2007 **(RANJIT SINGH)**
khurmi **JUDGE**